



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 09-07328
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: Elizabeth M. Sziebert, Esquire

June 22, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant, her husband, and their parents purchased a printing business to capitalize on her husband’s expertise in marketing commercial print services. Over the next two years, their printing machine operator died and their business manager was disabled. Neither could be properly replaced, and sales were hurt by the severe recession. They did their best, but ultimately had to close the business and file for bankruptcy. Applicant remains gainfully employed in work at which she excels, and is very highly regarded. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted an updated security clearance application (SF 86) on July 10, 2009, after self-reporting her family’s emergent financial problems to her Facility Security Officer. On June 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on June 9, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 10, 2010, and the case was assigned to me on November 15, 2010. DOHA issued a Notice of Hearing on December 21, 2010, and I convened the hearing as scheduled on January 31, 2011. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered exhibits (AE) A through E, which were admitted without objection, and testified on her own behalf. Her father and husband also testified. I granted Applicant's request to leave the record open until February 14, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on February 9, 2011. On February 10, 2011, Applicant submitted additional documents that were marked AE F through K, and admitted without objection. The record was closed as scheduled.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor, where she has worked since October 2004. She has no military service. She has held a security clearance throughout her current employment without incident. She earned a bachelor's degree in business management in 2002. She and her husband were married in February 2006. They have two children, ages four and two.¹ In her response to the SOR, Applicant admitted all of the factual allegations in SOR ¶¶ 1.a through 1.d.² Applicant's admissions, including her statements in response to DOHA interrogatories,³ are incorporated in the following findings.

When Applicant started working for her current employer, she earned a salary of \$42,000 per year as a Configuration Analyst Associate. Due to her ability to learn quickly and her excellent professional performance, her duties and responsibilities were rapidly increased. She presently earns about \$65,000 per year and is very highly regarded by her present and former managers. Both of them wrote letters extolling her integrity, trustworthiness, responsibility, and dedication.⁴

Applicant's husband is a high school graduate, who worked in a variety of jobs after school before moving home to take over his father's printing business about ten years ago. After his father passed away, he purchased the duplex in which his mother

¹GE 1; Tr. 93-96.

²AR. Note that Applicant misunderstood the allegation in SOR ¶ 1.b. That debt had been repaid before the date of the SOR. She admitted its existence, but did not mean to admit it was still unpaid. Tr. 138-139.

³GE 2.

⁴AE B; AE C; AE I; Tr. 96.

lived and refinanced the first mortgage for \$160,000. His mother then paid him rent to live in her unit, while he occupied the other unit. After he and Applicant married and she became pregnant, they decided to buy a larger home that would also reduce Applicant's 90-minute commute from the duplex to her job site. In April 2007, they purchased their present home for \$320,000, with a first mortgage loan of \$256,000 and a second mortgage loan of \$32,000. They financed the down payment and closing costs by taking out a \$33,000 second mortgage on the duplex.⁵

Around the same time, Applicant's husband wanted to expand his printing business, in which he brokered commercial printing sales for other printing operations, by buying an existing print shop franchise that was for sale. Up to that time, he earned about \$35,000 to \$40,000 per year. He consulted with a number of people about the viability of his business plan, and projected that he could earn about \$30,000 to \$35,000 for the first few years while business grew, with net profits on top of that beginning within three years. Applicant's father, who is recently retired from a career as a business operations planner with a defense contractor, has successfully invested and saved sufficient funds to be financially well off. Her mother continues to earn a good salary as a school principal. With the economy growing strongly in mid-2007, and a good base of existing customers for print products, Applicant's father agreed to cosign a Small Business Administration start-up loan with her husband to finance the purchase. The original loan amount was between \$125,000 and \$130,000. Applicant's husband also took out a home equity loan on the duplex for \$55,000. Applicant was a co-borrower on all of her husband's loans after their marriage, and was a co-owner of the new printing business.⁶

Applicant and her husband bought the print shop in August 2007. They retained the operator of the printing and binding machinery, who had worked in that shop for 10 years and in the printing business for 20 years. They also hired an office manager who had experience running the business side of a print shop. Applicant's husband concentrated on sales, marketing, and customer service. The business broke about even until the end of 2008, with enough income for Applicant's husband to pay himself about \$30,000 per year as planned. At the end of 2008, without warning, the print equipment operator committed suicide. In January 2009, the office manager was injured in an automobile accident and could not work for three months. Applicant's husband tried to find replacement employees, but was unsuccessful. He tried to take over both functions himself, but was then unable to generate as many sales. At about the same time, the economic recession began to badly reduce the demand for commercial printing services. As a result of the failing business, Applicant and her husband began falling behind on both business and personal debt payments. They borrowed some money from their parents, but business remained bad. The company was finally closed and dissolved on December 10, 2010.⁷

⁵GE 2; GE 4; AE A; Tr. 43, 49-56, 74-77.

⁶GE 2; GE 4; Tr. 26-28, 42-56, 76-77.

⁷GE 2; Tr. 44-45, 51-54, 70-71.

After moving to their new house, Applicant and her husband rented their unit in the duplex to tenants who lived there for about six months. The monthly payments on the mortgage and home equity loans totaled \$1,909 per month. Applicant's mother-in-law paid \$850 per month in rent and the other tenants paid \$1,050 per month. The tenants were evicted for failing to pay rent in the fall of 2007, and they could not find new tenants until March 2008. Those tenants moved out in November 2008 and new tenants were not found until May 2009. During this last vacancy, their payments on the first mortgage fell significantly behind. Applicant's mother-in-law decided to buy the duplex and, after several attempts, was able to arrange financing. The sale was closed on December 31, 2009. The three loans to Applicant and her husband that were secured by the duplex were repaid in full. The \$56,437 debt alleged in SOR ¶ 1.b was one of those loans.⁸

Applicant paid the \$120 debt alleged in SOR ¶ 1.d after discovering it was delinquent when she obtained her credit report in connection with completing her SF 86. It involved a traffic ticket that her husband received while driving her car. She thought he had paid the ticket, but he had not.⁹

The \$11,017 debt alleged in SOR ¶ 1.a represents a delinquent credit card account. The card was issued by the lender of the home equity loan discussed above as part of that transaction. Applicant's husband used the card to charge some business start-up expenses, and intended to repay the balance once the business generated sufficient revenue. It never did, and this debt is included in the bankruptcy proceedings described below.¹⁰

The allegation in SOR ¶ 1.c concerns Applicant's first mortgage on the home they purchased in April 2007. The loan is in foreclosure. The loan first became delinquent in February 2009. By the end of July 2009, the loan was six months delinquent in the amount of almost \$10,000. The original lender, who is listed as the creditor on the SOR, sold the loan to another financial institution. Applicant and her husband applied for a loan modification with the new creditor. While their application was pending, and in order to qualify for consideration of a loan modification, they were required to make three consecutive monthly payments starting in January 2010. After making these payments, they were informed that their loan modification was still under review and they should continue payments at the agreed rate. They made three more payments, in April, May, and June 2010. Applicant's husband contacted the lender in late July concerning the status of the modification and was told that a final decision was close and they should not pay anything that month. He contacted them again in August and was told there was still no decision and not to pay, but to submit updated income information. They did so, but were informed in September that their loan modification had been denied, but they could apply for a different loan modification program. They

⁸GE 2; AE G; Tr. 54-58, 76-77, 98.

⁹GE 1; GE 2; GE 4; AE H; Tr. 62-63, 98-99.

¹⁰AE A; Tr. 58-60, 75-76.

again submitted an application with supporting documentation. They contacted the lender again in October, but were told no decision had been made. During that month they also first consulted their bankruptcy attorney and decided that they would not be able to keep the house. Under their attorney's advice, they had no further contact with, and made no more payments to, the creditor while proceeding through bankruptcy. At the time of the hearing, they continued to occupy the home pending a request for possession by the lender. Once that happens, they intend to rent an apartment or small house even closer to Applicant's place of employment than the house.¹¹

Applicant and her husband have borrowed additional funds from their parents over the last few years. Her father is obligated to repay the remaining \$105,000 balance on the Small Business Administration loan, which he will be able to do without serious ramifications. Her parents have also lent her a total of about \$12,000 throughout this period. The family's plan is for Applicant and her husband to repay this \$117,000 when they are able to do so, or the remaining balance will be subtracted from her share of their estate and distributed to her two siblings. Applicant's mother-in-law also lent the couple about \$20,000 that primarily went into the failed business venture. They also anticipate repaying these funds to her once Applicant's husband resumes working. These intra-family loans are not included in the bankruptcy proceedings.¹²

Applicant and her husband also owe \$18,250 in delinquent business taxes to the state. This debt will not be discharged in the bankruptcy. Applicant's student loans, totaling about \$15,000, are in forbearance and accruing interest at 3.5%. They will not be discharged either. They reaffirmed the loan for one of their vehicles, which involves monthly payments of \$720 until the loan is fully repaid in August 2011.¹³

After several sessions with their attorney, Applicant and her husband filed for a Chapter 7 bankruptcy on January 14, 2011. They paid all required fees before the filing. The bankruptcy was not finalized at the close of the record, but no complications were apparent that would interfere with successful discharge of their dischargeable debts. They will surrender their house to the secured lenders, with any unsecured remainder discharged. About \$147,000 in other unsecured debt will also be discharged.¹⁴

Applicant submitted weekly pay statements and an updated budget plan documenting their present financial situation with Applicant as the sole source of income. The budget does not include housing expenses, as they remained in their home pending notification to vacate from the bank. They showed a \$469 monthly surplus, which they were saving for their anticipated rental deposit. The budget includes \$215 per month in donations to their church. It also includes the \$720 monthly car

¹¹GE 2; GE 3; GE 4; AE A; Tr. 60-61, 66-70, 80-83, 93.

¹²Tr. 28-30, 33-35, 100-102.

¹³AE A; Tr. 71-73, 104-105, 110, 118, 120.

¹⁴AE A; Tr. 61, 71-72, 103-104.

payment that will only continue through August 2011, as discussed above. They have carefully economized their living expenses and stopped using credit cards altogether. Applicant's husband was actively seeking employment in a night-shift position so that they would not have to incur child-care expenses by working at the same time. They also enrolled in a 13-session credit counseling and financial planning class that ran from February through May 2011.¹⁵

A retired Navy captain, who has been a close family friend and known Applicant since she was a young girl, described her high character and positive attributes in detail, and concluded that her personal trustworthiness, judgment, and sense of responsibility are beyond reproach.¹⁶ Applicant's mother also submitted an affidavit, describing her good academic record, leadership in school and church activities, dedication to her work and family, and overall responsibility and good judgment.¹⁷ Her father testified to her integrity, good judgment, and responsibility.¹⁸ Applicant's demeanor during the hearing was very candid, straightforward, and credible. She is thoroughly informed concerning their financial situation and actively working to resolve it. She has kept family members and work colleagues fully informed of her financial troubles in connection with the failure of her husband's business. In fact, she self-reported the emerging delinquencies as a potential security issue to her facility security officer in April 2009, many years before she would have been due for a reinvestigation, because she understood her obligation to do so under applicable security procedures. She would self-report any future potentially adverse information as well. This self-report was the only thing that triggered the present proceedings to determine her continued eligibility for a security clearance.¹⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

¹⁵AE I; AE J; AE K; Tr. 73-74, 89-90, 107-116.

¹⁶AE D.

¹⁷AE E.

¹⁸Tr. 30.

¹⁹Tr. 88-89, 105-107.

guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and ¶ 19(c) “a history of not

meeting financial obligations.” There is no evidence of frivolous or irresponsible spending, deceptive or illegal financial practices, or financial issues caused by any misconduct on Applicant’s part. Her history of financial problems started in early 2009, when a combination of the unforeseeable loss of two key employees and the sharp business downturn associated with the severe recession caused her husband’s printing business to begin failing. Since then, she has been unable to meet some of their joint obligations despite maintaining full time employment and earning substantial raises. The evidence raising these DCs shifts the burden to Applicant to mitigate the resulting potential security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial problems:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant’s delinquent debts arose recently and continue, in part, at present. However, they occurred under circumstances that are unlikely to recur. She had no financial concerns until she and her husband decided that he should try to expand the scope of his printing business. On the best advice of many experienced people they consulted, they undertook necessary debt to execute what seemed at the time to be a sound business plan. That business is now closed, and most of the resulting debts will be discharged in bankruptcy. The entirety of the evidence, on balance, establishes Applicant’s current reliability, trustworthiness, and good judgment, providing some mitigation under AG ¶ 20(a).

Mitigation under AG ¶ 20(b) was also established. Applicant’s financial problems were caused by the failure of her husband’s business due to the unforeseeable death of one key employee, the disabling injury of another employee, and the most severe business downturn since the Great Depression. They struggled to make the business profitable, but could not do so. They minimized their living expenses to the extent possible, sold their duplex, and tried for almost a year to obtain a modification

agreement with their home mortgage lender. When all else failed, they consulted a bankruptcy attorney and have followed his advice to obtain a fresh start. It would be difficult, even in hindsight, to craft a more responsible set of choices Applicant and her husband could have made under the circumstances with which they were confronted.

Applicant and her husband recently obtained formal financial counseling, but they undertook each venture that led to their current problems only after consulting family members and other professionals who recommended the choices they made. When saving their home and business became an unrealistic goal, they retained a bankruptcy attorney to help them resolve their delinquencies and other debts. Their Chapter 7 bankruptcy has been filed and will result in the discharge of most of their debt. They plan to resolve their state tax debt first, then pay Applicant's student loans and their intra-family debts as resources allow. They plan to repay their parents, but there is no schedule under which they need to do so. They can survive without incurring further debt on Applicant's income alone, and will have substantial income available to repay the remaining debts once Applicant's husband finds a job. Thus, significant mitigation was also established under AG ¶¶ 20(c) and (d).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has 'taken significant actions to implement that plan.'"²⁰ This applicant and her husband demonstrated a very reasonable plan to continue resolving their debts within their means, and have been implementing that plan very successfully.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

²⁰ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a hard-working and dedicated employee. She supported her husband's attempts to expand his formerly successful printing business, as did both of their parents. Unforeseeable personnel and economic problems during late 2008 and early 2009 ultimately proved to be too much to overcome, and the business failed resulting in substantial debt. She and her husband minimized expenses and stretched their resources as far as they could to meet their financial obligations. Once it became evident that the business would not survive, they initiated bankruptcy proceedings to resolve their debts. They have established a budget that will facilitate continued resolution of their few remaining debts, without the risk of incurring additional debt. Applicant is a mature and experienced individual, who is fully accountable for her situation and intends to continue resolving her obligations. She self-reported her emerging financial troubles to her security manager to ensure that any resulting security concerns were properly raised and resolved. She is fully cognizant of the importance of following security procedures and has unfailingly done so. The potential for pressure, coercion, exploitation, or duress is minimal, and she has demonstrated a sufficient pattern of financial responsibility to show that financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. She fully met her burden to mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge